

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

August 22, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 08od-116

Oahu

Sale of Remnant to Hoku Lele LLC, Waimanalo, Koolaupoko,  
Oahu, Tax Map Key: 4-1-25:abutting 51.

APPLICANT:

Hoku Lele LLC, mailing address is 41-725 Kumuhau Street,  
Waimanalo, Hawaii 96795.

LEGAL REFERENCE:

Section 171-52, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waimanalo situated at Waimanalo,  
Koolaupoko, Oahu, identified by Tax Map Key: 4-1-25:abutting 51,  
as shown on the attached map labeled Exhibit A.

AREA:

2,870 square feet.

ZONING:

State Land Use District: Agriculture  
City & County of Honolulu CZO: Country District

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES \_\_\_\_\_ NO x

CURRENT USE STATUS:

Vacant and unencumbered.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined  
by independent or staff appraiser, subject to review and approval  
by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to abutting landowner(s) and will become privately owned land at that point.

DCCA VERIFICATION:

Not applicable. The applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine the one-time payment of fair market value for the remnant; and
- 2) Consolidate remnant with the Applicant's abutting property through the County subdivision process.

REMARKS:

Pursuant to section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics." The subject parcel has been determined to be a remnant by this definition for the following reasons:

The parcel is a discontinued portion of Kumuhau Street following a road realignment. The road realignment created remnants that left the applicant's property landlocked. Some of the other road remnants were sold to the abutting landowners previously. The State previously subdivided the road remnant to conform to the abutting landowners' lot line boundaries but did not consummate all of the sales.

The applicant is the owner of parcel (1) 4-1-25:51 as staff has confirmed by City and County Real Property Tax Records. The applicant wishes to sell his private property and would like to resolve this issue.

The applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Of the government agencies solicited to provide comments regard the remnant sale, only the Office of Hawaiian Affairs (OHA) responded. OHA objected to the sale because they have been provided with no proof that the subject land meets the definition of "remnant". Further, OHA cites the recent Hawaii Supreme Court decision regarding the disposition of ceded lands. A copy of OHA's comment is attached as Exhibit B.

Staff responds that the definition in the statutes is not conclusive, but listing a few examples of remnant. Further,

pursuant to the advice from the Department of the Attorney General, we can continue our practice of transferring the remnant.

There are no other pertinent issues or concerns, and staff has no objections to the request.

RECOMMENDATION:

That the Board:


1. Find that the subject lands are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and, therefore, by definition is a remnant pursuant to Chapter 171, HRS.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-1-25:51, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the sale of the subject remnant to Hoku Lele LLC covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current deed or grant (remnant) form, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,




Al Jodar  
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



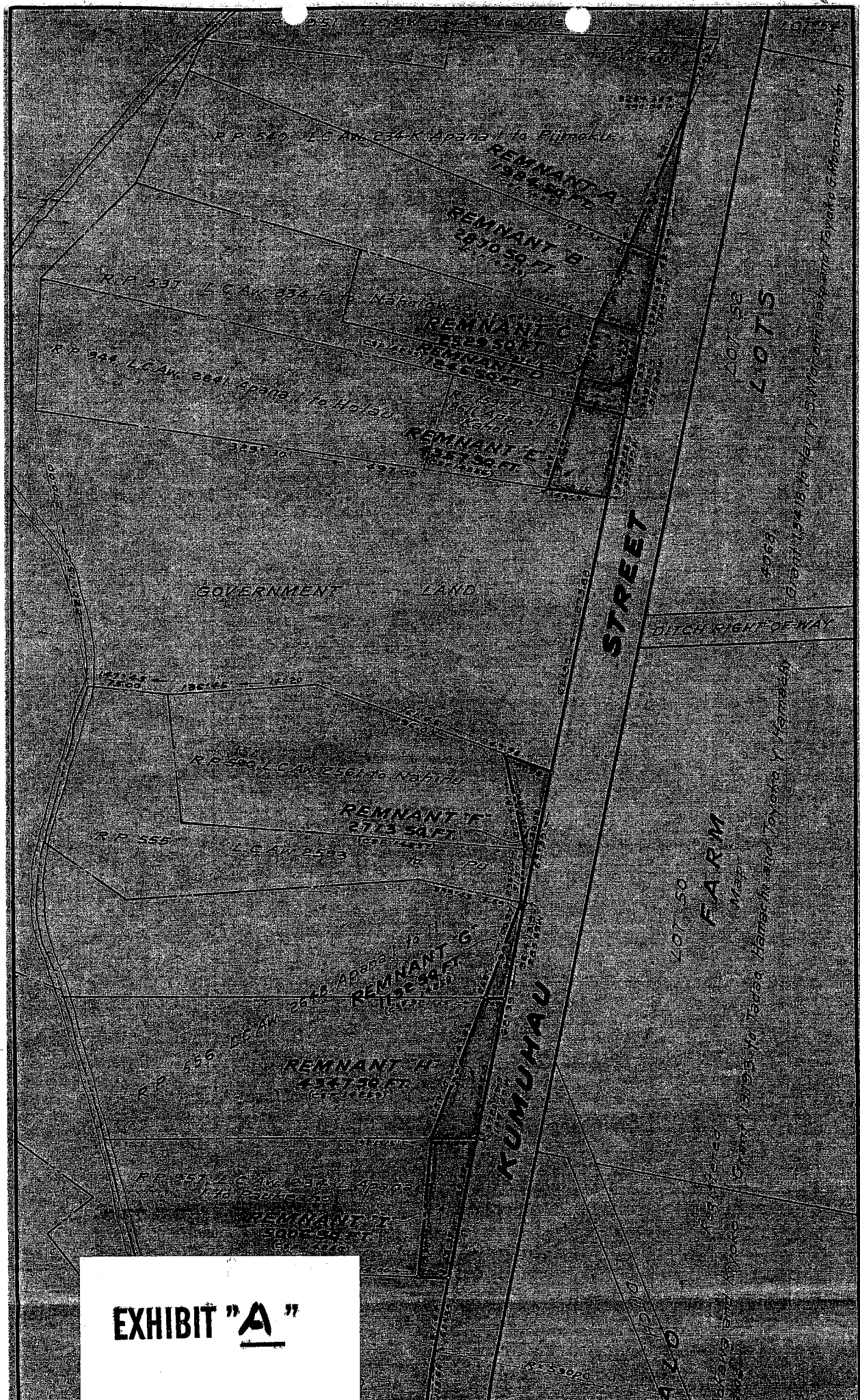


EXHIBIT "A"

PHONE (808) 594-1888



**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS**  
711 KAPI'OLANI BOULEVARD, SUITE 500  
HONOLULU, HAWAII 96813

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LAND DIVISION  
(808) 594-1865

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DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

HRD08/1189

August 4, 2008

Al Jodar, Land Agent  
Department of Land and Natural Resources  
Land Division  
P.O. Box 621  
Honolulu, HI 96809

**RE: Request for comments on a proposed sale of remnant lands, Waimānalo, O'ahu;**  
**TMK: 4-1-025 (abutting): 056 (remnant B); Ref. No.: 08OD-116**

Aloha e Al Jodar,

The Office of Hawaiian Affairs (OHA) is in receipt of the above-mentioned letter dated June 30, 2008. The proposed sale would allow Hoku Lele, LLC, to acquire approximately 2,870 square feet of ceded lands, which abut the applicant's lands. The applicant seeks to acquire this parcel so that it can be consolidated with the applicant's existing lands and sold. OHA has reviewed the project, apologizes for the delayed response and offers the following comments.

We note that these are ceded, Section 5(b) lands. While we understand that Hawaii Revised Statutes, Chapter 171 allows for parcels that meet the statutory definition of "remnant" to be sold, OHA has been provided with no proof that these lands meet that definition, particularly as this request is based upon the applicant's desire to sell the currently owned, adjoining property. Until we are provided with such proof, we object to this proposal.

**§171-52 Remnant.** (a) Definition. The term "remnant" means a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics. A remnant may be:

- (1) Land acquired by condemnation which is in excess of the needs for which condemned;
- (2) Vacated, closed, abandoned, or discontinued road, street or alley or walk, railroad, ditch, or other right-of-way.

**EXHIBIT "B"**

Al Jodar, Land Agent  
August 4, 2008  
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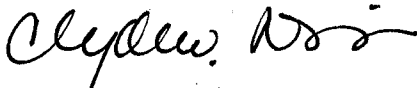
Furthermore, OHA also objects to this request because of the recent Hawai'i State Supreme Court ruling in Office of Hawaiian Affairs v. Housing & Cmty. Dev. Corp., 177 P.3d 884 (Haw. 2008). We remind the Land Division that the Court stated in its January 31, 2008 ruling that "given the 'crucial importance [of the 'aina or land to] the [n]ative Hawaiian people and their culture, their religion, their economic self-sufficiency, and their sense of personal and community well-being,' any further diminishment of the ceded lands (the 'aina) from the public lands trust will negatively impact the contemplated reconciliation/settlement efforts between native Hawaiians and the State."

The court concluded that "the Apology Resolution and related state legislation, give rise to the State's fiduciary duty to preserve the corpus of the public lands trust, specifically, the ceded lands, until such time as the unrelinquished claims of the native Hawaiians have been resolved." (*Id.*) The Supreme Court then instructed the circuit court to place an injunction on the state from transferring "any other ceded lands from the public lands trust until the claims of the native Hawaiians to the ceded lands have been resolved." (*Id.*)

Should this land be sold, despite the ruling of the Hawai'i State Supreme Court, OHA requests that a record of any such property transaction note the fact that these are ceded lands, which will assist in the creation and maintenance of an accurate accounting of all ceded lands transactions.

Thank you for the opportunity to comment. If you have further questions, please contact Heidi Guth at (808) 594-1962 or e-mail her at [heidig@oha.org](mailto:heidig@oha.org).

'O wau iho nō me ka 'oia'i'o,



Clyde W. Nāmu'o  
Administrator